

APPEAL NO. 001104

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 13, 2000. The hearing officer determined that the appellant's (claimant) _____, compensable injury to his right hand does not extend to the cervical spine; and that he did not have disability. Claimant disputes these determinations on appeal, urging his views of the evidence. The respondent (carrier) contends in reply that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed in part; reversed and remanded in part.

The parties stipulated that on _____, claimant sustained a compensable injury to his right hand.

Claimant testified that he commenced his employment with the employer on March 1, 1999, and began training at a location in Texas in the operation of both a packaging or stretch-wrap machine and a scissor lift machine; that while the latter machine only required him to push buttons on a control panel, the former job required him to push extremely heavy packaged loads off the end of a conveyor belt; that on _____, he initially operated a packaging machine and later operated a scissor lift machine; and that while operating the scissor lift machine he noticed that his right hand was swollen and immediately reported this condition to his supervisor, Mr. B. Claimant further stated that he experienced neck and back pain later on that shift and that the plant manager took him to a clinic where he was seen by Dr. N. He said he did not mention his neck and back pain to Mr. B because he thought he was just sore from commencing manual labor. Claimant testified that he told Dr. N and all the doctors at the hospital about his neck and back pain in addition to his right hand swelling and could not account for their records failing to mention his injury being work related.

Claimant further testified that he worked until April 1, 1999, when he returned to the city where he resided in another state; that he subsequently saw various doctors at a Department of Veterans Affairs hospital and underwent diagnostic testing; that he had cervical spine surgery by Dr. S on July 20, 1999; and that he commenced employment with another employer on January 15, 2000.

Mr. B testified that he was claimant's supervisor while he was in training; that claimant was not operating the packaging machine on _____; and that on that date claimant reported only his hand symptoms and thought he had a recurrence of the carpal tunnel syndrome (CTS) for which he underwent surgery in 1998. Mr. B also stated that claimant did not mention any neck or back pain and thought he had recurring CTS from his repeated pushing of the buttons on the scissor lift machine.

Dr. DW, whom claimant selected for examination and consultation, reported on July 9, 1999, that claimant said he did not bang his head at work in March and could not recall a time when he jerked his neck; that there is MRI evidence for herniated discs at C3-4 and C5-6; and that "it is hard for [me] to understand how his symptoms of left body sensory loss could be related to his work claim."

Dr. SW, who reviewed the medical records, reported on December 17, 1999, that claimant underwent an anterior cervical fusion on July 20, 1999, at C3-4 and C5-6 secondary to cervical spondylosis; and that claimant's cervical changes resulting in the fusion procedure cannot in any way be related to his March 1999 injury but are a chronic process related to degenerative changes.

The hearing officer found that claimant's cervical disc herniation was caused by cervical spondylosis and not by the compensable injury of _____; that the cervical spondylosis was not caused by claimant's work duties for the employer; and that claimant was unable to obtain and retain employment at his preinjury wages due to his cervical injury from July 20, 1999, through December 6, 1999. The hearing officer concluded that claimant did not have disability.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the determination that claimant's compensable injury of _____, did not extend to his cervical spine. However, we reverse the determination of no disability because the parties stipulated that claimant sustained a compensable injury to his right hand. We remand the decision for further consideration of the disability issue as it relates to claimant's compensable hand injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings,

pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge